

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:12-po-007

-vs-

Magistrate Judge Michael R. Merz

:

CYRIL ZIBRIK,

Defendant.

ENTRY VACATING ORDER FOR BRIEFING

This case is before the Court *sua sponte*. Having reconsidered the matter since ordering briefing on the issue, the Magistrate Judge has become persuaded that, under Ohio law, the Government has presented a sufficient case for conviction under *Jackson v. Virginia*, 443 U.S. 307 (1979), if it proves that a defendant has violated the posted *prima facie* speed limit. The burden then shifts to the defendant to prove that his or her speed was nonetheless reasonable for the conditions. In this case the Government adequately prove Defendant exceeded the post *prima facie* speed limit and Defendant presented no evidence that his speed was otherwise reasonable for the circumstances. Knowing the particular location on Springfield Street, the Court is aware that there is a need for a reduced speed because of the frequency of accidents, often fatal, at the railroad overpass.

The speeding offense in question still must be charged under Ohio Revised Code §

4511.21(A). Ohio Revised Code § 4511.21(C) does not set forth a separate offense, but rather provides the opportunity for a defendant to come forward with proof of reasonableness.

Accordingly, the Order for Briefing is VACATED and the conviction in this case will stand as entered.

July 18, 2012.

s/ *Michael R. Metz*
United States Magistrate Judge